IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7209 of 1999

with

CRIMINAL MISC.APPLICATION No 7210 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAGAR ENTERPRISES

Versus

LARSEN & TUBRO LIMITED

Appearance:
In both the matters:

MR GIRISH D BHATT for Petitioners
Mr. M.B. Buch, for SINGHI & BUCH ASSO.
for Respondent No. 1
Mr. N.D. Gohil, APP, for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 11/01/2002

C.A.V. COMMON JUDGEMENT

1. The petitioners, original accused in Criminal Cases Nos.2099 of 1999 and 2100 of 1999, by filing these applications under Section 482 of the Code of Criminal Procedure ('Code' for short), have prayed to quash both the complaints lodged by the respondent No.1 in the Court of the learned Metropolitan Magistrate, Ahmedabad, and have further prayed to set aside the order dated May 14, 1999, passed by the learned Metropolitan Magistrate, Court No.9, Ahmedabad, issuing summons against the petitioners for the offence under Sections 138 and 142 of the Negotiable Instruments Act, 1881 ('Act' for short).

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2. As per the averments made in the complaint, being Criminal Case No.2099 of 1999, lodged by the respondent No.1 against the petitioners, it is borne out that the respondent No.1-Larsen & Toubro Limited is manufacturing cement, is a renowned company dealing in cement, and its branches are situated all over India. The petitioner No.1, M/s. Sagar Enterprises, is a proprietary firm and the petitioner No.2 is its proprietor-cum-owner. The petitioner No.1-Company was having its bank account in the Syndicate Bank, Delhi Chakla Branch, Ahmedabad. The said account was operated by the petitioner No.2 as proprietor of the petitioner No.1-firm. The main business of the petitioner No.1-firm was trading in cement. The petitioner No.1 had entered into an agreement with the respondent No.1-Company to sell cement and, accordingly, the petitioner No.1-company was appointed as authorized stockiest since the year 1996. The averments made in the complaint further indicate that a running account was maintained with the respondent No.1-Company with regard to purchase of cement from the Company. It is alleged that the cheques issued by the petitioner No.1-Company were dishonoured many times in the past. It is also alleged that huge amounts were due towards purchase of cement by the petitioner No.1-Company and, therefore, the petitioner No.1-Company had issued cheque No.858058 dated March 24, 1999 for an amount of Rs,15,28,698/- drawn on Syndicate Bank, Delhi Chakla Branch, Ahmedabad. The said cheque was signed by the petitioner No.2 as proprietor of the petitioner No.1-Company and, accordingly, a rubber stamp was affixed on the said cheque. The said cheque was drawn in favour of the respondent No.1-Company. As per the instructions of the petitioners, the said cheque was deposited by the

respondent No.1 on March 24, 1999 for realisation in ICICI Bank, wherein, the respondent No.1 was operating its account. It is alleged that the said cheque was dishonoured and returned with endorsement in the memo of the bank dated March 26, 1999 that 'account was closed'. The said memo along with debit advice was received by the respondent No.1 on March 30, 1999. Accordingly, the respondent No.1 served a statutory notice under the Act on March 31, 1999 on the petitioners which was received on April 7, 1999. As the petitioners did not comply with the notice and did not pay the amount of the dishonoured cheque, a complaint came to be filed in the Court of the learned Metropolitan Magistrate, Ahmedabad, which came to be registered as Criminal Case No.2099 of 1999.

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3. Similarly, the petitioners had issued cheque No.858059 dated March 26, 1999, for Rs.13,38,837/- drawn on Syndicate Bank, Delhi Chakla Road Branch, Ahmedabad, in favour of the respondent No.1-company towards outstanding dues of the purchase of cement, which was deposited in the ICICI Bank, Ahmedabad, wherein the respondent No.1 was maintaining its account. When the said cheque was deposited on March 26, 1999, it was dishonoured and was returned to the respondent No.1 with memo of the Bank dated March 27, 1999 with the endorsement that 'account was closed'. The said memo along with debit advice was received by the respondent No.1 on March 31, 1999. The respondent No.1 had served a statutory notice under Section 138 of the Act on March 31, 1999 which was received by the petitioners on April 7, 1999. As the petitioners did not comply with the demand made in the notice and did not pay the amount of the dishonoured cheque, a complaint came to be lodged in the Court of the learned Metropolitan Magistrate, Ahmedabad, on May 22, 1999 which came to be registered as Criminal Case No.2100 of 1999.

4. In both the cases, the learned Metropolitan Magistrate, Ahmedabad, after due verification of the respondent No.1, issued summons against the petitioners for the offences punishable under Sections 138 and 142 of the Act, which has given rise to filing of the present applications.

5. As common question of facts and law arise for my consideration, I propose to dispose of both the applications by this common judgment and order.

6. I have heard learned counsel Mr. G.D. Bhatt for the petitioners, learned counsel Mr. M.B Buch for M/s. Singhi & Buch, and learned Additional Public Prosecutor, Mr. N.D. Gohil, for respondent No.2-State of Gujarat.

7. The learned counsel for the petitioners, Mr. G.D.Bhatt, has vehemently submitted that, admittedly, both the cheques, though duly signed by the petitioner No.2, were blank cheques, as no date was mentioned in the said cheques and, therefore, they would not be called 'negotiable instrument' as per the provision of Section 6 of the Act. In support of the above submission, the learned counsel for the petitioners has placed reliance on the decision in the case of Taher N. Khambati vs. Vinayak Enterprises, reported in 1995 Cri.L.J.560. In the above decision, the appellant had advanced some money to the respondent and obtained a pro-note. The appellant-creditor took a blank signed cheque from the respondent with an understanding that the appellant would fill other columns in the cheque and present it if the respondent commits defaults in payment of interest. The respondent had paid interest for about eight months and thereafter stopped payment of interest and thereafter the appellant had put the date on the cheque as January 15, 1991 and wrote his own name in the space intended for payee and the amount was inserted as Rs.1,18,337/- and presented the cheque in the Bank. In the above facts, the learned single Judge of the High Court of Andhra Pradesh held that the appellant had obtained the blank signed cheque with a view to make use of it as a threat to the respondent for realisation of the amount and therefore it would not be construed that the respondent had issued the cheque voluntarily for discharge of any debt or legal liability as envisaged under Section 138 of the Act.

8. The learned counsel for the petitioners has further submitted that the cheques in question were handed over to the respondent No.1 on April 1, 1997 whereas the same were presented in the Bank after the validity period i.e. on March 26, 1999 and, therefore, no complaint could have been filed on the dishonoured cheques which were not valid when they were presented in the Bank for realisation. In support of the above submission, the learned counsel for the petitioners has placed reliance on the decision in the case of M/s. Cement Agencies vs V.Vijaya Babu reported in 1997 (4) Crimes p.273. In the above decision, the accused had issued blank cheques on October 4, 1991 and the complainant had acknowledged on the counter-foils and the same were given as security towards the amount which was

found to be due. The said cheques were admittedly not presented to the Bank within the period of six months from the date on which the same were drawn or within the period of validity. In light of the above facts, the learned single Judge of the Andhra Pradesh High Court held that if time-barred cheques can be encashed even after the expiry of the specified time it will create so many anomalous situations which are likely to be used by unscrupulous litigants.

9. On the other hand, the learned counsel for the respondent No.1, Mr. M.B. Buch, has vehemently submitted that the decisions on which the reliance is placed by the learned counsel for the petitioners required investigation of facts whether the said cheques were blank cheques or whether the said cheques had lost the validity because they were presented after the validity period. It is contended by the learned counsel for the respondent No.1 that the contention raised by the learned counsel for the petitioners relates to defence which cannot be gone into at the stage of quashing of the complaint as it would require the Court to elaborately deal with merits and demerits of the case which can only be done at the stage of the trial of the criminal cases. In the alternative, it is submitted by the learned counsel for the respondent No.1 that, admittedly, the cheques in question were signed by the petitioner No.2 and issuance of cheques was admitted by the petitioners. It is further submitted that the said two cheques were issued by the petitioners towards liability and dues of the respondent No.1 and they were presented after taking approval of the petitioners. It is, therefore, contended that the petitioners knew that they had issued cheques and the amounts of both the cheques were found due and they were liable to pay the said amount for which the cheques were issued. It is submitted by the learned counsel for the respondent No.1 that, if the drawer of the cheque closes his account after the cheque was issued and before the cheque reaches the bank, and the cheque is dishonoured with endorsement of the Bank that the account is closed, then, the drawer of the cheque would be liable to be held guilty of offence under Section 138 of the Act. It is submitted that both the cheques have been dishonoured with endorsement of the Bank that 'accounts were closed'. It is contended that closure of the account would also attract penal provision of Section 138 of the Act. In support of the above submission, the learned counsel the respondent No.1 has placed reliance on the decision in the case of J. Krishnan Nair vs. P. Jaseentha and another, reported in 1998 CRI.L.J. 3913. The learned counsel for the respondent No.1 has submitted

that there is no dispute regarding signature, name and amount shown in the cheques in question. It is submitted that only the dates in the cheques were inserted by the payee holder of the cheques in due course and it can be presumed as inserted with implied consent of the drawer of the cheques. It is submitted that the insertion of the dates in the cheques would not amount to material alteration as per Sections 87 and 118B of the Act so as to render the cheques void. In support of the submission, the learned counsel for the respondent No.1 has placed reliance on the decision in the case of Bhaskaran Chandrasekharan vs. Radhakrishnan, reported in 1998 CRI.L.J.3228, wherein the Division Bench of the Kerala High Court has ruled as under:

"When a cheque is issued for valid consideration, with no dispute regarding signature, amount and name, it cannot be said that putting a date on the cheque by the payee who is the holder of the cheque in due course would amount to material alteration rendering the instrument void. In fact, there is no material alteration. When a cheque is admittedly issued with blank date, and when the payee has no objection with regard to the name, amount and signature, it can be presumed that there is an implied consent for putting the date as and when required by the beneficiary, and get it encashed. In other words, when the date is put by the payee, or the drawer on the cheque the presumption under S.118 of the Act would arise. The burden is, therefore, entirely on the drawer of the cheque to establish that the payee had no authority to put the date and encash the cheque.
In the instant case, the cheque was complete in all respects, except the date. It is the contention of the defendant that handwriting of the date on the cheque is different and that the ink used for putting the date is also different. Assuming that if there is difference in the handwriting with regard to the date as well as the ink used, that is not enough to rebut the presumption under s.118(b) of the Act, since the payee has put the date on the basis of implied authority. It can be said that defendant has not discharged the burden or rebutted the presumption under S.118(b) of the Act."
The learned counsel for the respondent No.1 has placed reliance on the decision in the case of K.C. Devassia, St. Joseph's Chity Fund, Kaithavana vs. Subramanian Potti and another, reported in II (1996) CCR 106, wherein, the single Judge of the Kerala High Court has ruled that filling up of the blank cheque by the payee is different from committing a material alteration. No material alteration except the fact that the blank cheque which was handed over by the accused to the complainant

was filled up by him is alleged to invoke the provisions of Section 87. It was ruled that a material alteration is different from filling up of blank cheque by the payee. In the present case, admittedly, the cheques were signed and the amounts as well as the names of the payee were also mentioned. Only the dates in the cheques were not filled in. By filling up the dates of presentation in the cheques, the respondent-company had not committed any material alteration so as to make the instruments, namely, cheques, void and unenforceable to attract the provision of Section 87 of the Act.

10. It was incidentally argued by the learned counsel for the petitioner that before closing of the account in the Bank, the complainant was informed and, therefore, the cheques in question should not have been deposited for encashment. In my opinion, whether the complainant was informed about the closure of the account, requires a detailed investigation which question can only be decided after the parties adduce evidence at the trial. At the stage of quashing the complaint the Court is only required to see whether the complaint prima facie discloses offence for which it is filed and at this stage the defence of the accused cannot be looked into. Reading the complaint, in my view, the allegations made therein clearly make out a case for the offence punishable under Section 138 of the Act.

11. The Negotiable Instruments Act, 1881 was enacted and Section 138 thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instruments is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which would be deemed to be convertible into money and easily passable from one person to another. The laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged (See: (2001) 6 Supreme Court Cases 463: Dalmia Cement (Bharat) Ltd vs. Galaxy Traders & Agencies Limited and others).

12. In my view, the complaint and its accompaniments

prima facie do show the ingredients of Section 138 of the Act. Therefore the complaint cannot be thrown or quashed at the threshold. In my view, the complaint is not filed to abuse the process of Court. The contentions raised by the learned counsel for the petitioners in this application relate to the defence which can be decided only when the parties go to the trial. This is not rarest of rare case wherein interference of this Court is called for in the exercise of its inherent powers under Section 482 of the Code to quash the complaint.

13. As a result of foregoing discussion, I do not find any merits in these applications and they are dismissed. Notice is discharged. The ad-interim relief stands vacated in each application.

January 11, 2002 (M.H. Kadri, J.)
(swamy)